LRM Packaging, Inc. *and* Local 300-S, Production Service and Sales District Council, H.E.R.E., AFL–CIO. Case 22–CA–16415

September 16, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On April 12, 1991, Administrative Law Judge D. Barry Morris issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed cross-exceptions, a supporting brief, and a brief in opposition to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified below and to adopt the recommended Order as modified.

1. The judge found that the Respondent violated Section 8(a)(1) of the Act during the preelection period by promising to give a raise and grant medical benefits when the Company could afford it. We disagree.

Soon after the Respondent began operations in September 1988, employees began to inquire about medical benefits. Initially, Respondent's president, John Natali, stated that it was a new business and was not in a position to grant benefits at that time. Both prior to and during the union organizing campaign, which began in April 1989, Natali stated that he would give medical benefits when the Company could afford it. In December 1988 and in February 1989, he discussed with his insurance agent the possibility of a medical plan for LRM. During the preelection campaign, employees inquired about raises as well as medical benefits, and Natali responded that the Company would give a raise and grant a medical plan when the Company could afford it. The Union lost the June 29 election and filed objections. In September, while the objections were still pending, the Respondent gave a wage raise and implemented medical benefits effective in October.

The judge found, and we agree, that the Respondent's grant of medical benefits and a wage raise while the Union's objections to the election were pending was lawful. He determined that the granting of medical benefits was promised and set into motion months before the union campaign began, and that the wage increase was consistent with Natali's practice at his other two companies. The judge concluded that the granting of the medical benefits and wage increase at approximately the time of the Company's first anniversary was motivated by the Respondent's improved financial condition and was not an attempt to influence the employees' freedom of choice.

However, the judge further found that Natali's statements to employees at preelection meetings, that he would give them a medical plan and a wage raise when the Company could afford it, constituted unlawful conduct. We disagree.

Milagros Lazala, Nieve Luisa Cano, and Julio Matos, whose testimony the judge credited, denied that Natali conditioned these benefits on a union defeat. Natali's statement that he would give medical benefits and a wage raise to employees at some uncertain future time when the Company could afford to do so was not a promise calculated to affect the employees' free choice in the election. Rather, it was ''nothing more than an expression of the Respondent's opinion that it hoped to be in a position at some unspecified time in the future to offer more to its employees in terms of wages and working conditions, a statement which is privileged under Section 8(c) of the Act.''[2] The benefits were neither expressly nor implicitly associated with rejection of the Union. Further, because the judge found that the grant of medical benefits was promised and set into motion before the union campaign, the statement regarding those benefits was simply a reaffirmation of plans announced before the union campaign.[3]

The cases relied on by the judge in which similar statements were found unlawful are distinguishable. In *JFB Mfg.*, 208 NLRB 2 (1973), the respondent had interrogated another employee about employee Gloria Belonga's union activities. Thereafter, shortly before Belonga's unlawful discharge, a foreman invited her to his office, advised her that the union organizing campaign was untimely, related a story of his own unhappy involvement in a union organizing campaign, and then stated that the Company would someday better itself and offer employees more. The Board adopt-

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The General Counsel has excepted to the judge's failure to find that the Respondent violated Sec. 8(a)(1) of the Act by granting an extra holiday to all employees and a week's vacation for employees with 1 year of service. We find that this was not alleged as a violation in the complaint nor in the complaint as amended at the hearing. Although Respondent's president, John Natali, testified that the vacation and holiday were granted, we cannot find on the record in this case that this matter was fully litigated. Accordingly, we find the General Counsel's exception to be without merit.

[2] *Mariposa Press*, 273 NLRB 528, 529 (1984). See also *Thermalloy Corp.*, 213 NLRB 129, 131 (1974).

[3] *Cartridge Actuated Devices*, 282 NLRB 426, 428 (1986).

ed the judge's finding that the remarks were a promise of future benefits if Belonga and her colleagues abandoned their present union activity, and the remarks thus violated Section 8(a)(1). In *Permanent Label Corp.*, 248 NLRB 118, 131 (1980), enfd. 657 F.2d 512 (3d Cir. 1981), cert. denied 455 U.S. 940 (1982), in which similar statements were found unlawful, the statements were made within the context of numerous violations of Section 8(a)(1), (3), (4), and (5), including hallmark violations warranting a *Gissel*[4] bargaining order. Moreover, in two instances the promises were specifically conditioned on defeat of the union. We find those cases distinguishable because in both the promises occurred within a context of numerous other unfair labor practices and were associated with abandonment of union activity or union defeat in the election. We find that under the circumstances of this case, where Natali neither expressly nor implicitly conditioned the grant on the election outcome, and where the grants themselves were lawful, the statements did not violate Section 8(a)(1) of the Act.

2. We agree with the judge's finding that in July 1989, while the Union's objections to the election were pending, the Respondent violated Section 8(a)(1) of the Act by threatening loss of promised benefits because the Union filed objections to the election. Based on a composite of credited testimony, the judge found that at a meeting held soon after the Union filed its objections, in response to a question by employees as to when he was going to give them medical benefits and a raise, Natali responded that because the Union filed objections, ''I cannot do anything for you now.'' We agree with the judge that the Respondent's conduct, viewed as a whole, violated Section 8(a)(1) because John Natali's response placed on the Union the onus for withholding of benefits. *Gerkin Co.*, 279 NLRB 1012 (1986). We note that Natali's statements, made at an employee meeting shortly after he learned that objections had been filed, lacked the requisite assurances that employees would not be penalized whether they selected the Union and that any postponement of anticipated benefits was temporary and solely to avoid the appearance that he was attempting to interfere with the outcome of the election. See *Atlantic Forest Products*, 282 NLRB 855, 858 (1987).

Further, we note that the credited testimony established that prior to the election Natali had repeatedly said he would give a raise and medical benefits when the Company could afford it. Natali's statement after the election, that he could not do anything because the Union filed objections, is a departure from his earlier rationale and a campaign tactic which places on the Union the onus for the withholding of benefits. Finding a violation in these circumstances does not confront the Respondent with a ''Hobson's choice.'' It simply precludes the Respondent from having it both ways—immunity for both granting and withholding benefits and blaming the Union for the latter.

[4] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 3.

''3. By threatening plant closure if the employees chose to be represented by the Union, and by threatening loss of promised benefits because the Union filed objections to the election, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, LRM Packaging, Inc., South Hackensack, New Jersey, its officers, agents, successors, and shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Threatening its employees with plant closure if they choose to be represented by the Union, and threatening its employees with loss of promised benefits if the Union files objections to an election.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with plant closure if they choose to be represented by a union and WE WILL NOT threaten employees with loss of promised benefits if a union files objections to an election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

LRM PACKAGING, INC.

Olivia Garcia Boullt, Esq., for the General Counsel.
Neal D. Haber, Esq. (Moss & Boris), of New York, New York, for the Respondent.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in Newark, New Jersey, during 17 days of hearing beginning December 5, 1989, and ending June 21,

1990. On a charge filed on July 5, 1989,[1] a complaint was issued on August 31 alleging that LRM Packaging, Inc. (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices. On November 27 the Regional Director issued an order directing that this proceeding be consolidated with Case 22–RC–10135. On December 10, 1990, the General Counsel filed a motion to approve the Charging Party's withdrawal of that portion of the charge which seeks a bargaining order, to dismiss that portion of the complaint seeking a bargaining order and to sever and remand the representation case. On February 5, 1991, I granted the General Counsel's motion.[2]

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by the General Counsel and by the Respondent on October 31 and November 2, 1990, respectively.

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with an office and place of business in South Hackensack, New Jersey, has been engaged in the nonretail packaging of products. Respondent admits that it meets the requisite jurisdictional standards and admits, and I so find, that it is an employer engaged in commerce, within the meaning of Section 2(2), (6), and (7) of the Act. In addition, it has been admitted, and I find that Local 300-S, Production Service and Sales District Council, H.E.R.E., AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The issues are:

1. Did Respondent create the impression among its employees that their union activities were under surveillance in violation of Section 8(a)(1) of the Act?

2. Did Respondent threaten its employees with plant closure if they chose to be represented by the Union in violation of Section 8(a)(1) of the Act?

3. Did Respondent promise its employees benefits and threaten its employees with loss of promised benefits in violation of Section 8(a)(1) of the Act?

4. Did Respondent grant wage increases and medical and life insurance benefits to its employees in violation of the Act?

[1] All dates refer to 1989 unless otherwise specified.

[2] At the hearing a new par. 8 was added to the complaint alleging that Respondent granted wage increases in September 1989 and granted medical benefits in October 1989. In view of my recommended Order dated February 5, 1991, pars. 9–14 of the complaint have been dismissed.

B. *The Facts*

1. Background

LRM commenced business in September 1988. In December 1988 it relocated to its present facility. In April 1989 the Union commenced an organizing drive at Respondent's facility and on May 1 it filed with the Board a petition seeking certification as representative of Respondent's production and maintenance employees. Pursuant to a stipulated election agreement executed by the parties an election by secret ballot was conducted on June 29. On July 3 the Union filed objections to conduct affecting the results of the election. On November 27 the Regional Director issued his second report on objections and consolidated the representation case with this proceeding. As noted above, Case 22–RC–10135 has been severed from this proceeding and remanded to the Regional Director.

2. Impression of surveillance

The complaint alleges that on June 16, John Natali, the president of LRM, created the impression among Respondent's employees that their union activities were under surveillance. Norma Aguilar had played a key role in the union organizing effort. She had been outspoken during the first meeting held by Respondent to discuss the organizing activity. She testified that approximately 2 weeks before the election, Natali told her that ''somebody had told him that I had brought in the union.'' In support of this allegation General Counsel, in its brief, cites the above-quoted testimony of Aguilar and Natali's testimony that prior to the election he ''knew some employees who favored the union.''

Natali credibly testified that at a meeting held with the employees on April 21 a ''couple'' of employees said that Norma Aguilar would ''speak for them.'' Natali further testified that on June 9 he had a discussion with Aguilar in which she said:

> that people had accused her of bringing the union there, and I said, well I don't know that you did it. Oh, she says, people have said that I was the one that brought the union here. And she says, did I do anything wrong? I says no, you were well within your rights. You haven't done anything wrong.

Natali denied that he told Aguilar that he knew that she brought in the Union. I find that the General Counsel has not shown by a preponderance of the evidence that Natali told Aguilar that he knew that she had brought in the Union.

In support of the allegation, in its brief, the General Counsel cites two cases, *Sierra Hospital Foundation*, 274 NLRB 427 (1985), and *Arrow Automotive Industries*, 256 NLRB 1027 (1981). I believe that neither case supports finding a violation in this proceeding. In *Sierra Hospital Foundation*, the director of nursing told union activist Cory that she knew that ''nurses Phillips, Green, Haskins and Stone were involved in the organizing campaign'' (274 NLRB at 427). The Board stated ''we agree with the Judge's assessment that such statements, showing such specific knowledge of employee organizing activities, suggest that the Respondent was engaged in surveillance.'' In *Arrow Automotive Industries*, the supervisor asked an employee if she knew that there had been a union meeting the previous evening. On asking how

he knew, he replied ''there was a lot of things he knew which she did not know. He said he could even tell her everybody that was there'' (256 NLRB at 1029). In the instant proceeding Natali admitted that he knew some of the employees who favored the Union. He did not specify their names. I believe that this proceeding is distinguishable from *Sierra Hospital Foundation* where the supervisor was very specific in mentioning the names of the people involved in the organizing and from *Arrow Automotive Industries* where the supervisor said that he knew ''everybody'' that was at the union meeting. I believe that the General Counsel has not sustained his burden of showing that Respondent created the impression among its employees that their union activities were under surveillance and, accordingly, the allegation is dismissed.

3. Threat of plant closure

The complaint alleges that at several meetings it held with all of its employees during the period between April 15 and June 28, Respondent threatened its employees with plant closure if they chose to be represented by the Union. Ana Colon testified that at the first meeting of employees held by Respondent, Natali stated ''that if the union came in he would not have with which to give the promised benefits. And then he would have to close the company.'' Similarly, Aniana Crespo testified that at a meeting in April where all the employees were present Natali stated that ''all he would have left to do would be to talk to the union, and if it came down to it he would have to close down.'' Aguilar stated that at one of the meetings with employees Natali said that ''if he actually negotiated with the union, that he would be forced to close the company, because he had no money in order to pay all the expenses that the union was asking for.'' Julio Matos, an employee, denied that Natali said he would close the plant. Similarly, Nieve Cano, another employee, denied that Natali said he would close the plant.

When Natali was asked whether he stated to employees that he would close the Company he denied that he made that statement. He testified, however, that the employees ''had a feeling that that's the way it would work. That if I had no money to meet the union demands, that I automatically would have to shut down. Where they got that notion I don't know, but I never said it.'' Natali was then asked whether he said anything about the possibility of closing the plant at a meeting with employees on June 26. He testified:

> The only time that was alluded to was when we talked about strikes. And what was said was that in a very long protracted strike possibly a company would have to shut down if the strike was too long and there was an undue burden on the company . . . . It was always a possibility. That's as much as was said about plant closing.

Armand Saavedra, secretary-treasurer of Respondent, also testified that on June 26 Natali spoke to the employees about what it would mean to have a strike. He credibly testified that Natali told the employees that ''if there's a union there's always a probability of a strike.'' When asked whether Natali used the word ''possibility'' or ''probability,'' Saavedra was very certain that the word used by Natali was ''probability.''

Although some of the witnesses testified that Natali actually said that he would close the plant, after considering all the testimony, I find that he did not actually make that statement. I find that he told the employees that if the Union were voted in, negotiations would ensue and there was the ''probability'' that there would be a strike. In that event, there was the possibility that the Company would go out of business.

In *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969), the Supreme Court articulated standards to determine whether statements of possible effects of unionization are permissible. The Court stated (at 618):

> An employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a ''threat of reprisal or force or promise of benefit.'' He may even make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . . .

In *Marathon LeTourneau Co.*, 208 NLRB 213, 222 (1974), statements similar to those made by Natali were held to be ''thinly veiled threats of plant closure if the Union won the election, violative of Section 8(a)(1) of the Act.'' In *Turner Shoe Co.*, 249 NLRB 144, 146 (1980), the Board held that there was ''no demonstrable record evidence to support the Employer's message that . . . unionization would lead to strikes, plant closure, job loss, and other unidentified disasters.''

I find that the record does not contain any basis of objective fact to show that if the Union were to win the election there would ''probably'' be a strike which may then force Respondent to close. It is entirely understandable that witnesses such as Colon, Crespo, and Aguilar obtained the impression that Natali said he would be forced to close the Company. As was stated in *Georgetown Dress Corp.*, 201 NLRB 102, 116 (1973):

> It is only simple justice that a person who seeks advantage from his elected use of the murky waters of double entendre should be held accountable therefor at the level of his audience rather than that of sophisticated tribunals, law professors, scholars of the niceties of labor law, or ''grammarians.''

I therefore conclude that Natali, by making the statement that if the Union won there would probably be a strike which could possibly cause the Company to close, threatened plant closure, in violation of Section 8(a)(1) of the Act.

4. Assistance with transportation costs

The complaint alleges that during several meetings it held with its employees Respondent promised its employees assistance with transportation costs if they rejected the Union. Cano testified that at a meeting with employees which took place prior to the election one of the employees mentioned transportation costs. Cano credibly testified that Natali said that he ''couldn't provide the transportation costs, because he couldn't promise anything to anybody.'' Natali testified that several employees asked for help in transportation costs. He

credibly testified that he replied that ''we couldn't give them an answer at that time. That I'd look into it and . . . I would get back to them.'' I find that the General Counsel has not shown that Respondent promised its employees assistance with transportation costs. Accordingly, the allegation is dismissed.

5. Promise of benefits

The complaint alleges that at several meetings it held with its employees prior to the election Respondent promised its employees wage increases and medical and life insurance benefits if they rejected the Union. Colon testified that on June 28, the day before the election, Natali told the employees that ''if the union did not come in'' he would give them benefits.[3] Crespo testified that Natali stated at that meeting that ''if the house won they would increase our salary and give us an insurance plan.'' Aguilar testified that at one of the meetings Natali told the employees to ''give him two weeks to give us the benefits, if the union was no longer outside.'' On cross-examination, Aguilar conceded that Natali said that ''with a union or without a union'' if he couldn't afford the cost of benefits he couldn't provide them.

Milagros Lazala, an employee of LRM, was called as a witness by Respondent. She credibly testified that at a meeting held with employees in April, Natali said that ''he was going to give us medical benefits and a raise.'' She further testified that Natali said ''he couldn't give them today but he would give them.'' She denied that anything was said about 2 weeks being a period of time before Natali took any action with respect to the wage increases or providing an insurance plan. She further credibly testified that Natali stated at a meeting which all employees attended that ''he couldn't give the raise because the factory was just beginning but that eventually he would [give] it to us when the company had more income.'' Similarly, Cano credibly testified that at a meeting of all employees at the time when the Union first began organizing, Natali stated that ''he was going to give us the medical benefits . . . when he could afford to do it.'' She also testified that Natali did not say that if the Union stays away for 2 weeks he will then give the medical benefits and the wage increase. Likewise, Matos credibly testified that at a meeting held in April Natali stated that he would furnish a raise and a medical plan ''whenever he was under the necessary conditions to afford this.''

I credit the testimony of Lazala, Cano, and Matos that Natali told the employees at meetings held prior to the election that he would grant them a raise and a medical plan when the Company could afford it. In *JFB Mfg.*, 208 NLRB 2 fn. 1 (1973), the Board held that a statement to an employee that the ''company would someday better itself'' and would offer the employees ''more'' constituted a violation of Section 8(a)(1). Similarly, in *Permanent Label Corp.*, 248 NLRB 118, 131 (1980), enfd. 657 F.2d 512 (3d Cir. 1981), the Board affirmed the administrative law judges decision, which stated:

> The promise of benefits need not be specific in nature or as to the time of its implementation,and need not be expressly conditioned on abandonment of union support. Thus a promise that the Company would someday better itself and offer the employees more constituted a promise of future benefits in violation of Section 8(a)(1).

I find, therefore, that Natali's statement to the employees in the preelection period that Respondent would give a raise and grant a medical plan when the Company could afford it is a promise of benefits in violation of Section 8(a)(1) of the Act.

6. Threatened loss of benefits

The complaint alleges that in July Respondent threatened its employees with loss of promised benefits unless the Union dropped the charge filed against Respondent. On June 29 a secret-ballot election was held at which time the Union lost the election. On July 3 the Union filed objections to conduct affecting the results of the election. Colon testified that after the election Natali told employees that ''he was not going to give the benefits, because the union had a suit against him. Until the union [took] that suit away he would not be able to give any benefits.'' Crespo testified that at a meeting which took place about a week after the election, Natali told the employees ''that he had a letter from the NLRB that he couldn't do anything, but that he would go ahead with everything he had promised.'' Natali testified that he had a meeting with employees on July 10 or 11. He testified that employees asked him ''when are you going to give us the medical benefits and when are you going to give us our raise?'' He replied, ''I cannot do anything for you now.''[4] Based on the above testimony, I find that at a meeting held soon after the Union filed its objections, in response to a question by employees when he was going to give the raise and the medical benefits, Natali responded that because the Union filed objections ''I cannot do anything for you now.''

It is a well-established Board rule that during the preelection period an employer must grant or withhold benefits ''as he would if a union were not in the picture.'' *Gerkin Co.*, 279 NLRB 1012 (1986); *Great Atlantic & Pacific Tea Co.*, 166 NLRB 27, 29 (1967). The same rule has been applied after an election, while objections to the election are pending. *Martin Industries*, 290 NLRB 857 (1988). In *Gerkin Co.*, supra, the Board pointed out the rationale for this rule stating ''the Respondent used the withholding announcement as a campaign tactic and sought to place the onus on the union for the withholding of the benefits, a classic violation of the rule requiring the employer to proceed as if the Union were not in the picture.'' By stating ''I cannot do anything for you now'' because the Union filed objections to the elec-

[3] Numerous witnesses testified that no meeting was held the day before the election. Natali and his attorney both credibly testified that Natali was advised repeatedly not to schedule a meeting withing 24 hours of the election. An attorney's advice may be taken into account in assessing the factors to be considered in determining credibility resolutions. See *King Trucking Co.*, 259 NLRB 725, 728 (1981); *Gossen Co.*, 254 NLRB 339, 350 (1981), enfd. in part and denied in part on other grounds 719 F.2d 1354 (7th Cir. 1983). I find that Respondent did not hold a meeting with its employees on June 28.

[4] Robert Moss, Respondent's attorney, credibly testified that he advised Natali to ''tell employees that nothing has changed regarding his ability to do anything.'' In this regard, see cases cited above in fn. 3.

tion, Respondent in effect was placing the onus on the Union for the withholding of the benefits. I find that this constituted a violation of Section 8(a)(1) of the Act.

7. Wage increases and granting of medical benefits

At the hearing the complaint was amended to allege that Respondent violated the Act by granting wage increases in September and by granting medical benefits in October 1989. The record is clear that wage increases were granted during the last week of September and a medical plan was instituted effective October 15.

LRM commenced business in September 1988. During the first several months of operation, the company maintained a minimum level of employees and was not profitable. In late October or early November 1988, an employee, Rosa Larreta, asked Natali ''when are we going to get Blue Cross and Blue Shield.'' Natali responded that it was a new business and ''we weren't in a position to grant medical benefits at this time.'' Natali is the owner of another company located in close proximity to LRM, called La Rinascente. In December 1988 while talking with Ron Snider, the insurance agent for his other company, Natali mentioned to Snider that ''down the road I'm probably going to have to talk to you about a medical plan for the employees'' at LRM. In January or early February, several employees, including Larreta, again asked Natali for medical benefits. He gave the same reply that he had given to Larreta earlier. During February Natali again spoke with Snider and told him ''it look's like I'm going to make a go'' of LRM and ''I'd like to know what I have to do to find out what it is going to cost me for a medical plan.'' Snider told Natali that it would be necessary to get a census sheet filled out for the employees at LRM so that he would be able to tell him the cost for different medical plans that would be available. In May the census forms were distributed to the employees and then returned to the insurance agency. During June Natali was furnished by the insurance agency with the costs of medical plans with eight different companies. At a meeting held with the employees on June 26, Natali told the employees ''we now have what we had been seeking, which is the costs for the medical plan, and that at the time which we can afford them, now that we know what they cost, we would implement them.''

Natali testified that by September LRM's ''financial situation improved to the point where we now felt we could afford the medical plan that we had talked to the employees about.'' The Company's account receivables and incoming orders had greatly increased and for the month of August LRM generated about one-third of the total sales generated during its entire fiscal year. In addition, Natali credibly testified, which testimony was not controverted, that LRM had a number of large orders placed with it for work to run through October and reasonably anticipated obtaining substantial additional business in the succeeding months. LRM selected one of the insurance plans suggested by its insurance agency in its June 9 proposal and implemented that plan on October 15.

In addition, in September LRM provided a wage increase to its employees from $4.58 per hour to $4.90 per hour. September marked the first anniversary of LRM's commencement of operations. Natali explained the reason for giving the wage increase at the first anniversary, as follows:

> I'm involved with two other companies La Rinascente being one of them . . . and in both businesses we grant annual increases. And we review on a yearly basis . . . . So we felt that after one year at LRM, and with the good financial report that I had for August and into September, we felt that it was time to grant a wage increase. Had I not been making money, neither one of those things would have happened. There wouldn't have been any medical benefits, and there wouldn't have been a wage increase.

The granting of benefits to employees after an election, and while objections are pending, can be violative of the Act if it is an attempt to influence results if a second election is ordered. *Electric Hose Co.*, 262 NLRB 186, 205 (1982). However, ''the granting of wage increases and/or benefits during the pendency of a representation proceeding, including the pendency of objections to an election, is not per se unlawful.'' *Marine World USA*, 236 NLRB 89, 90 (1978). Rather, as the Board stated (ibid.):

> The test is whether, based on the circumstances of each case, the granting of increased wages and benefits is calculated to impinge upon the employees' freedom of choice in an upcoming scheduled election or an election which might be directed in the future.

The Board continued (ibid.):

> Thus, for example, the Board has found the granting of new wages and benefits during the pendency of a representation proceeding to be lawful where an employer has established that such action was consistent with past practice, such action had been decided upon prior to the onset of union activity, or business justifications prompted the adjustment.

See also *Premium Maintenance*, 282 NLRB 10 (1986), and *Craft Maid Kitchens*, 284 NLRB 1042, 1044–1045 (1987). In *Churchill's Supermarkets*, 285 NLRB 138, 140 (1987), the Board held that the implementation of a new health care program during an election campaign did not violate the Act. The Board stated (ibid.), ''the Respondent demonstrated that the improvement in benefits represented the logical working out of a plan initiated before the advent of a union campaign . . . .''

As early as September 1988 Natale told an employee that he would give medical benefits when the Company could afford it. In December 1988, 4 months prior to the union organizing campaign, Natali advised his insurance agent of the possibility of a medical plan for LRM. In February 1989, Natali again spoke to his insurance agent concerning the medical plan and was told that census forms would be required to be completed. This was done during May and the information concerning alternative medical plans was furnished by the insurance agent to Natali in June. In September, after seeing that the financial situation of the Company improved, Natali decided to grant medical benefits effective October 15. With respect to the wage increase, Natali's practice at the other two companies he owns is to grant a yearly wage increase. Seeing that the business had become profitable he granted a wage increase at LRM at the first anniversary date of the Company's being in business. Under such

circumstances, I believe that the granting of the benefits and the increased wages was not ''calculated to impinge on the employees' freedom of choice in an upcoming scheduled election or an election which might be directed in the future,'' *Marine World USA*, supra, 236 NLRB at 90. The granting of the wage increase was consistent with Natali's practice at his other two companies and the granting of the medical benefits had been set into motion as early as December 1988, 4 months prior to the advent of the Union. When the results of business operations during the summer of 1989 showed that the Company was profitable, Natali decided to grant both a wage increase and the medical benefits. Under these circumstances, I believe that the wage increase and the granting of medical benefits did not constitute a violation of the Act. See *Marine World USA*, ibid. Accordingly, the allegation is dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 300-S, Production, Service and Sales District Council, H.E.R.E., AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening plant closure if the employees chose to be represented by the Union, by promising wage increases and medical benefits if the employees rejected the Union, and by threatening loss of promised benefits because the Union filed objections to the election, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

5. Respondent did not violate the Act in any other manner alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, LRM Packaging, Inc., South Hackensack, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with plant closure if they choose to be represented by the Union; promising its employees wage increases and medical benefits if they reject the Union and threatening its employees with loss of promised benefits if the Union files objections to an election.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in South Hackensack, New Jersey, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that those allegations of the complaint as to which no violations have been found are dismissed.

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''